



## The Legal Standing and Regulation of Legal Counsel for Members of the Indonesian National Police

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**Abstract:** This article aims to analyze the regulation of legal counsel within the profession of the Indonesian National Police (Polri), as well as to examine the legal basis that enables Polri to provide legal assistance. This study adopts a normative legal research method, utilizing statutory and conceptual approaches. Legal materials were collected through document studies and analyzed prescriptively. The findings indicate that the role of legal counsel in Indonesia is generally governed by Law Number 18 of 2003 concerning Advocates and Article 1 paragraph (13) of the Indonesian Criminal Procedure Code (KUHP). However, Polri also has its own internal regulations regarding legal counsel, particularly Regulation of the Chief of the Indonesian National Police Number 2 of 2017 on the Procedures for Providing Legal Assistance by Polri, especially Article 1 paragraph (6) and Article 5 paragraph (2). This regulatory framework raises juridical issues as it is not fully aligned with the provisions of the Advocates Law, particularly Article 3 paragraph (1) letter c, which stipulates that only licensed advocates have the right to provide legal services. Therefore, a legal review of conflicting norms is necessary to ensure legal certainty and to prevent overlapping authority between the advocate profession and legal counsel within Polri.

**Keywords:** Legal Aid; Legal Counsel; Legal Advisorship; Police Force.

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## 1. Introduction

Legal counsel serves as a legal expert who plays a crucial role within the Indonesian justice system by providing consultation, guidance, and representation to clients.<sup>1</sup> The primary duties of legal counsel include ensuring that clients understand their legal rights and obligations, assisting them in making informed decisions in accordance with applicable laws, representing them in court or legal negotiations, drafting contracts, offering legal opinions, and resolving legal disputes or issues.<sup>2</sup> In Indonesia, this profession is firmly grounded in various legal regulations, particularly Law No. 18 of 2003 on Advocates.<sup>3</sup>

This Law forms the principal legal basis for the legal profession in Indonesia. Article 32 paragraph (1) of the Law stipulates that: "Advocates, legal advisors, practicing lawyers, and legal consultants who were already appointed at the time this Law comes into force shall be deemed as Advocates under this Law." This law comprehensively regulates the rights and responsibilities of advocates, professional ethics, and their role within the justice system, thereby constituting the foundation for professional legal practice in Indonesia.<sup>4</sup>

However, regulatory conflict arises when addressing the role of legal counsel within the context of the Indonesian National Police (Polri). **Regulation of the Chief of the Indonesian National Police (Perkap) No. 2 of 2017 on Procedures for Providing Legal Assistance by the Indonesian National Police**, in Article 1 paragraph (6), states that: "*Legal Counsel/Legal Representative/Companion refers to a Civil Servant in Polri assigned or authorized by the Chief of Police to provide legal assistance.*" Furthermore, Article 5 paragraph (2) provides that the implementation of legal assistance shall be carried out by "*members of the Indonesian National Police and/or Civil Servants of the National Police acting as Legal Counsel/Legal Representative/Companion based on an official order from an authorized superior.*"

This provision clearly contradicts Article 3 paragraph (1)(c) of Law No. 18 of 2003 on Advocates, which explicitly states that a requirement to be appointed as an Advocate is "not holding the status of a civil servant or state official." This contradiction presents a significant legal issue, as despite having different titles, both regulations materially

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<sup>1</sup> Ravi Handri and Rizki Syafril, "Peran Lembaga Bantuan Hukum (LBH) dalam Memberikan Bantuan Hukum terhadap Rakyat Miskin di Kota Padang," *Arus Jurnal Sosial dan Humaniora* 4, no. 3 (December 21, 2024): 1842–50, <https://doi.org/10.57250/ajsh.v4i3.770>.

<sup>2</sup> Daris Andalusia and Hudi Yusuf, "Keterkaitan Ikatan Dokter Indonesia Dan Lembaga Bantuan Hukum (Lbh) Jakarta Terhadap Malpraktik Yang Terjadi Di Masyarakat," *Jurnal Intelek Insan Cendikia* 2, no. 1 (January 21, 2025): 1386–98, <https://jicnusantara.com/index.php/jiic/article/view/2342>.

<sup>3</sup> Tri Nugroho Akbar, "Analisis Sistem Single Bar Bagi Advokat Menurut Undang-Undang No. 18 Tahun 2003," *Jurnal Thengkyang* 9, no. 1 (August 12, 2024): 57–64, <https://jurnal.unisti.ac.id/thengkyang/article/view/193>.

<sup>4</sup> Achmad Sujoko and Ali Hadi, "Pelanggaran Kode Etik Advokat Dalam Praktik Hukum Di Indonesia; Implementasi Undang-Undang Republik Indonesia No. 18 Tahun 2003 Tentang Advokat," *Al Kamal* 4, no. 2 (December 30, 2024): 91–112, <https://ejournal.staika.ac.id/index.php/alkamal/article/view/98>.

govern the same subject: the profession of legal counsel or advocate, including eligibility and the provision of legal services to clients.

In practice, this regulation has been actively implemented. According to a thesis by Andri Affandy titled “The Process of Legal Aid Assistance in Criminal Cases by the Police according to Perkap No. 2 of 2017 and Law No. 18 of 2003 on Advocates,” in 2021, there were 45 legal aid requests from POLRI personnel and their families in the North Sumatra Regional Police. These consisted of 39 KKEP (Police Ethics Commission) cases, 3 criminal cases, 2 civil cases, and 1 case rejected due to lack of evidence. By June 2022, 28 legal aid requests had been filed from POLRI personnel in the Civil Service Police Unit of North Sumatra.<sup>5</sup>

The regulatory contradiction between Perkap No. 2 of 2017 and Law No. 18 of 2003 can be summarized in two main points. First, the Perkap defines Legal Counsel/Legal Representative/Companion as Civil Servants of Polri assigned by a superior to provide legal assistance. Meanwhile, the Advocates Law strictly prohibits civil servants or state officials from serving as advocates. Second, the Perkap mandates that legal assistance be carried out by members of the police force or civil servants under an official order, which directly opposes the legal requirements set by the Advocates Law.<sup>6</sup>

Given the legal conflict, an in-depth juridical review of the legal counsel system within the Indonesian National Police is essential. This study is significant in identifying possible solutions to the regulatory contradiction. The analysis will assess the harmonization of laws governing legal counsel and propose recommendations to resolve the discrepancy between the Perkap and the Advocates Law, in pursuit of legal certainty within Indonesia's justice system.

## 2. Method

This study employs a normative legal research method using a statutory approach<sup>7</sup> and a conceptual approach<sup>8</sup> to analyze the regulatory conflict between Regulation of the Chief of the Indonesian National Police No. 2 of 2017 and Law No. 18 of 2003 on Advocates, particularly regarding the legal framework governing legal counsel within the profession of Indonesian National Police personnel. The data collection technique was carried out through library research, examining primary legal materials in the form of relevant legislation (i.e., Law No. 18 of 2003 on Advocates and Police

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<sup>5</sup> Andri Affandy, “Proses Pendampingan Bantuan Hukum Dalam Perkara Pidana Oleh Kepolisian Menurut Perkap No. 2 Tahun 2017 Dan UU No. 18 Tahun 2003 Tentang Advokat” (Medan, Universitas Muhammadiyah Sumatra Utara, 2022).

<sup>6</sup> Faradiba Aprillia Fatimatusyah and Ahmad Sholikhin Ruslie, “Legalitas Anggota Kepolisian Negara Republik Indonesia (POLRI) Sebagai Penasehat Hukum,” *Jurnal Pendidikan Tambusai* 7, no. 3 (December 14, 2023): 28484–90, <https://doi.org/10.31004/jptam.v7i3.11506>.

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi (Jakarta: Prenadamedia Group, 2014).

<sup>8</sup> Irwansyah Irwansyah, *Penelitian Hukum ; Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020); H. Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis Serta Disertasi* (Bandung: Alfabeta, 2017); Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum : Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2010).

Regulation No. 2 of 2017), secondary legal materials including scholarly journals and previous academic writings, and tertiary legal materials such as legal dictionaries and relevant legal encyclopedias. The data were then analyzed qualitatively using systematic interpretation and grammatical interpretation techniques to identify the hierarchy of legal norms and apply the principle of legal preference (*lex superior derogat legi inferiori*) in order to resolve the normative conflict between the two regulations. The ultimate aim is to provide recommendations for harmonizing the legal framework regarding the status of legal counsel originating from within the ranks of the Indonesian National Police.

### 3. Analysis and Discussion

#### 3.1. The Legal Regulation of Legal Counsel within the Profession of the Indonesian National Police

##### 3.1.1. The Considerations in the Chief of Police Regulation No. 2 of 2017 on Procedures for the Provision of Legal Assistance by the Indonesian National Police

Weigh	a. that every civil servant in the National Police of the Republic of Indonesia and his or her family has the right to obtain legal assistance from the service both inside and outside the judicial process in accordance with the provisions of laws and regulations
	b. that the procedure for legal aid as stipulated in the Regulation of the Chief of the National Police of the Republic of Indonesia Number 7 of 2005 concerning Legal Assistance and Advice within the National Police of the Republic of Indonesia is no longer in accordance with legal developments and laws and regulations, so it needs to be replaced
	c. that based on the considerations as referred to in letters a and b, it is necessary to stipulate the Regulation of the Chief of the National Police of the Republic of Indonesia concerning the Procedures for the Provision of Legal Aid by the National Police of the Republic of Indonesia.
Remember	1. Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia (Statute Book of the Republic of Indonesia No. 2 of 2002, Supplement to Statute Book of the Republic of Indonesia No. 4168)

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2. Government Regulation No. 3 of 2003 concerning the Technical Implementation of General Judicial Institutions for Members of the National Police of the Republic of Indonesia (Statute Book of the Republic of Indonesia No. 2003)

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3. Government Regulation No. 42 of 2010 concerning the Rights of Members of the National Police of the Republic of Indonesia (Statute Book of the Republic of Indonesia No. 57 of 2010, Supplement to Statute Book of the Republic of Indonesia No. 5123)

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Based on the Considerations in the Regulation of the National Police Chief No. 2 of 2017 concerning the procedures for providing legal aid by the police of the Republic of Indonesia, we can find out that the reasons for making the regulation are:

1. Every civil servant in the National Police and their families has the right to receive legal assistance from the service both inside and outside the judicial process in accordance with the provisions of laws and regulations.
2. That the procedure for legal aid as stipulated in the Regulation of the Chief of the National Police of the Republic of Indonesia Number 7 of 2005 concerning Legal Assistance and Advice within the National Police of the Republic of Indonesia is no longer in accordance with legal developments and laws and regulations, so it needs to be replaced.
3. That based on the considerations as referred to in letters a and b, it is necessary to stipulate the Regulation of the Chief of the National Police of the Republic of Indonesia concerning Procedures for the Provision of Legal Aid by the National Police of the Republic of Indonesia.
4. The consideration does not explain that Civil Servants in the National Police have the authority to become legal advisors, therefore the author argues that the reason that civil servants in the National Police are legal advisors is not in line with the considerations, because in the consideration of the National Police they are only entitled to legal assistance, not as legal advisors.

When referring to the consideration of the National Police Chief's regulation no. 2 of 2017 concerning procedures for providing legal aid by the Indonesian National Police, the National Police Chief's regulation no. 2 of 2017 concerning procedures for providing legal aid by the Indonesian National Police is a derivative of Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia, Government Regulation No. 3 of 2003 concerning the Technical Implementation of General Judicial Institutional Procedures for Members of the National Police of the Republic of Indonesia, and also Government Regulation Number 42 of 2010 concerning the Rights of Members of the National Police of the Republic of Indonesia. Meanwhile,

Law no. 8 of 1981 concerning the criminal procedure code is not included in the consideration.<sup>9</sup>

Then the consideration is not a derivative of Law No. 8 of 1981 concerning the criminal procedure code because the consideration does not include Law No. 8 of 1981 concerning the criminal procedure code. In fact, Law No. 8 of 1981 concerning the criminal procedure code is the source of criminal procedural law in Indonesia and is also the legal basis in the criminal justice process. This can cause confusion for legal practitioners in carrying out practices in criminal justice because the National Police Chief's Regulation No. 2 of 2017 concerning the Procedures for the Provision of Legal Aid by the Indonesian National Police is not a basic law in the criminal justice process and the National Police Chief's Regulation No. 2 of 2017 concerning the Procedures for the Provision of Legal Aid by the Indonesian National Police cannot be used as a formal legal basis in criminal law.<sup>10</sup>

In conclusion, the consideration of the National Police Chief's Regulation No. 2 of 2017 concerning the Procedures for the Provision of Legal Aid by the Indonesian National Police is not included in Law no. 8 of 1981 concerning the Criminal Procedure Code and is not a derivative of Law No. 8 of 1981 concerning the Criminal Procedure Code, furthermore the National Police Chief's Regulation No. 2 of 2017 concerning the Procedures for the Provision of Legal Aid by the Indonesian National Police is not a law The basis in the criminal justice process and the National Police Chief's Regulation No. 2 of 2017 concerning the procedure for providing legal aid by the Indonesian National Police cannot be used as a formal legal basis in criminal law.

### **3.1.2. Police Authority on Legal Advice**

The police as the guardians of security, order, and peace of the community. The National Police is a social control officer who will maintain security and order in the social environment. As one of the human resources that has potential and has a strategic role and its position as a controller and weaver in the community.<sup>11</sup> The National Police of the Republic of Indonesia is the National Police in Indonesia, which is in charge and responsible directly under the President.<sup>12</sup> If you look at the authority

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<sup>9</sup> Rendra Monti, "Pemberian Bantuan Hukum Terhadap Polri Yang Melakukan Tindak Pidana Berdasarkan Peraturan Kapolri Nomor 2 Tahun 2017 Tentang Tentang Tata Cara Pemberian Bantuan Hukum Oleh Kepolisian Negara Republik Indonesia" (other, Jambi, university of jambi, 2021), <https://repository.unja.ac.id/>.

<sup>10</sup> Joni Afrianto and Ferdi Ferdi, "Pemberian Bantuan Hukum Kepada Anggota Polri Yang Melakukan Tindak Pidana Pada Saat Menjalankan Tugas Kedinasan," *Unes Journal of Swara Justisia* 6, no. 2 (July 6, 2022): 147-55, <https://doi.org/10.31933/ujsj.v6i2.256>.

<sup>11</sup> Eflando Cahaya Chandan Pradana, "Proses Peradilan Terhadap Anggota Polri Yang Melakukan Tindak Pidana" (masters, Skripsi, Universitas Muhammadiyah Magelang, 2016), <https://repositori.unimma.ac.id/992/>.

<sup>12</sup> Mohamad Rizky Alhasni, Lisnawaty Wadju Badu, and Novendri Mohamad Nggilu, "Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak di Bawah Umur," *JURNAL LEGALITAS* 12, no. 2 (2019): 114-27, <https://doi.org/10.33756/jelta.v12i2.5799>; Zamroni Abdussamad et al., "Pendekatan Cultural Studies Perlindungan Hukum Bagi Penyandang Disabilitas Di Kabupaten Boalemo," *Community Development Journal : Jurnal Pengabdian Masyarakat* 4, no. 6 (December 11, 2023): 11518-26, <https://doi.org/10.31004/cdj.v4i6.16043>; Ahmad Ahmad and Lisnawaty Wadju Badu,

of the National Police of the Republic of Indonesia as mandated in Law Number 70 of 2009 concerning the National Police of the Republic of Indonesia, article 7 paragraph 3 clearly gives a function to the Police to carry out the process of protection and protection to the community. Thus, efforts in carrying out the Function must be carried out as well as possible within the framework of effective and efficient law enforcement.<sup>13</sup> This is certainly not in accordance with the regulation of the National Police Chief no. 2 of 2017 concerning the procedures for providing legal aid by the Indonesian National Police Article 3 which reads:

- (1) Those who are entitled to Legal Aid:
  - a. the institution of the National Police;
  - b. function units/work units;
  - c. civil servants in the National Police; and
  - d. the extended family of the National Police.

Therefore, the author assumes that the regulation of the National Police Chief no. 2 of 2017 concerning the procedure for providing legal aid by the police of the Republic of Indonesia is not made for the community, this is certainly not in line with Law no. 12 of 2011 concerning the establishment of laws and regulations article 6 paragraph 1 letter g, namely the content of the Laws and Regulations must reflect the principles of justice.

Individuals who provide legal assistance to the National Police institution (including the Legal Advisor of the National Police or Legal Attorney of the National Police) consist of members of the National Police and Civil Servants of the National Police, as stipulated in the Regulation of the National Police Chief Number 2 of 2017 concerning Procedures for the Provision of Legal Aid by the National Police of the Republic of Indonesia. Juridically, this is not fully in accordance with the requirements stipulated in the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates, and there is no exception provision in the Advocate Law, there is no exception article in the Law that allows the presence of Legal Counsel or Legal Attorney outside the predetermined framework. Legal aid for members of the National Police and families of the National Police can be done by utilizing Legal Advisors from Legal Aid

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"Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 5, no. 2 (October 28, 2021), <https://doi.org/10.35308/jic.v5i2.2547>; Wiranda Putri Madamba et al., "Application Of Territorial Principles Against Pedophile Criminal Act Perpetrators Perpetrated By Foreign Citizens," *JURNAL LEGALITAS* 14, no. 01 (April 30, 2021): 77–84, <https://doi.org/10.33756/jelta.v14i01.11114>; Sri Winda Latif, Lisnawaty w Badu, and Ahmad Ahmad, "Penyalahgunaan Kewenangan Oleh Aparat Desa Ditinjau Dari Aspek Pidana: (Putusan Pn Gorontalo Nomor 1/Pid.Sus-Tpk/2020/Pn Gto)," *Jembatan Hukum: Kajian Ilmu Hukum, Sosial Dan Administrasi Negara* 1, no. 2 (May 8, 2024): 135–55, <https://doi.org/10.62383/jembatan.v1i2.236>.

<sup>13</sup> Mohd Yusuf Dm, "Analisis Terhadap Pembatasan Dan Pengawasan Kewenangan Kepolisian Di Indonesia," *Milthree Law Journal* 1, no. 2 (July 5, 2024): 149–80, <https://doi.org/10.70565/mlj.v1i2.7>.

personnel within the National Police and other Legal Advisors.<sup>14</sup> As the Regulation of the National Police Chief No. 2 of 2017 concerning the procedures for providing legal aid by the National Police related to legal assistance to the National Police who can move to become legal advisors in trials and participate in criminal cases can injure advocates which with a series of trips for its members to become legal advisors guided by Law Number 18 of 2003 concerning advocates with a PKPA structure, UPA, and running an internship at an advocate's office until the appointment of an advocate. It is different with members of the National Police without knowledge of the mastery of advocates easily present proceedings in court and only show a sprin (warrant) from the leadership.

With the existence of a law that expressly and specifically regulates duties, organizations, status, authority and responsibilities, namely about advocates who make actions to maintain legal authority a special matter. Meanwhile, the act which is carried out by the regulation of the chief of police No. 2 of 2017 concerning the procedure for providing legal aid by the police of the Republic of Indonesia has no specificity and is not even regulated in the hierarchy of legislation, this makes the law created specifically injured as a result of regulations made to protect internal parties in the agency which exceeds the authority of members of the National Police who have warrants in Carrying out a double profession as a legal advisor is very unnatural, so it is considered a personal act of the institution, which cannot be attributed to the specific law of the agency responsible for implementing the law.<sup>15</sup> From this argument, the author argues that the regulation of the National Police Chief No. 2 of 2017 concerning the procedure for providing legal aid by the Indonesian National Police violates Law No. 18 of 2003 concerning Advocates.

In the regulation of the National Police Chief No. 2 of 2017 concerning the procedures for providing legal aid by the Indonesian National Police, it is regulated regarding the authority of the National Police regarding legal advice, such as Civil Servants of the National Police and Members of the National Police can become Legal Advisors such as article 1 number 6 and article 5 number 2:<sup>16</sup>

Article 1 Number 6	Legal Advisor/Legal Representative/Companion is a Civil Servant in the National Police who receives an order/duty or power of attorney from the National Police Leader to provide legal assistance.
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<sup>14</sup> Pradana, "Proses Peradilan Terhadap Anggota Polri Yang Melakukan Tindak Pidana."

<sup>15</sup> Fatimatusyah and Ruslie, "Legalitas Anggota Kepolisian Negara Republik Indonesia (POLRI) Sebagai Penasehat Hukum."

<sup>16</sup> Sugiharto Sugiharto, *Bantuan Hukum Bagi Anggota POLRI dan Keluarga POLRI: Filosofi, Formulasi & Implementasi* (Surabaya: Jakad Media Publishing, 2022).

Article 5 Number 2	<p>The implementation of Legal Aid as intended in paragraph (1) shall be carried out by:</p> <ul style="list-style-type: none"> <li>a. members of the National Police and/or Civil Servants of the National Police who act as Legal Advisors/Legal Representatives/Companions based on a warrant from the authorized leadership of the National Police; and</li> <li>b. section of law application in the form of clarification, legal review, providing juridical legal opinions and advice on general criminal acts, special criminal acts, criminal acts</li> </ul>
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Kemudian dalam hal memberikan bantuan Polri memiliki wewenang seperti legal consultation, legal advice, legal advice and opinions, advocacy and assistance as stated in article 2 of the National Police Chief's Regulation No. 2 of 2017 concerning the procedures for providing legal aid by the National Police of the Republic of Indonesia:<sup>17</sup>

Article 2	<p>The provision of Legal Aid by the National Police includes:</p> <ul style="list-style-type: none"> <li>a. legal consultation;</li> <li>b. legal advice;</li> <li>c. legal advice and opinions;</li> <li>d. advocacy; and</li> <li>E. Companion</li> </ul>
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Furthermore, the National Police has the authority to carry out legal assistance at the level of investigation, the prosecution level, and all levels of justice as stated in article 8 paragraph 1 of the National Police Chief's Regulation No. 2 of 2017 concerning the procedures for providing legal aid by the Indonesian National Police:<sup>18</sup>

Article 8 paragraph 1	Legal Counsel/Legal Attorney carries out Legal Aid on:
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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

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- a. level of investigation;
  - b. the level of prosecution; and/or
  - c. all levels of justice
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In addition, the National Police is also authorized to carry out legal assistance starting from the level of examination to the disciplinary hearing or the police code of ethics commission hearing, which is stated in article 9 paragraph 1 of the National Police Chief Regulation No. 2 of 2017 concerning the procedures for providing legal aid by the National Police of the Republic of Indonesia.<sup>19</sup>

From some of the explanations above, the author considers that the authority of the National Police Chief regarding legal advice is the same as that of Advocates in terms of being legal advisors and providing legal assistance, this is certainly worrying because it will cause legal problems when both of them practice in criminal justice, because basically the regulation that regulates legal advice is Law No. 18 of 2003 concerning advocates in accordance with the order of Law No. 8 of 1981 Regarding the Criminal Procedure Code article 1 paragraph 13, namely a legal advisor is a person who meets the requirements determined by or based on the law to provide legal assistance.

So it can be concluded from the above argument that the authority of the National Police regarding legal advice is to carry out legal assistance at the level of investigation, the level of prosecution, and all levels of justice as stated in the regulation of the Chief of Police No. 2 of 2017 concerning the procedures for providing legal aid by the police of the Republic of Indonesia, then in terms of providing assistance the National Police has authority such as legal consultation, Legal advice, legal advice and opinions, advocacy and companions.

### **3.2. The Legal Basis of the National Police Can Provide Legal Aid**

After the author traced the regulation of the National Police Chief no. 2 of 2017 concerning the procedures for providing legal aid by the National Police of the Republic of Indonesia, the author found that the legal basis for the National Police to provide legal assistance was found in its considerations, namely Government Regulation Number 3 of 2003 concerning the Technical Implementation of General Judicial Institutions for Members of the National Police of the Republic of Indonesia (Statute Book of the Republic of Indonesia Number 3 of 2003, And the legal basis is found in Article 13 paragraphs 2 to 3:

- "(2) The National Police of the Republic of Indonesia is obliged to provide legal assistance for suspects or defendants who are members of the National

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<sup>19</sup> Ibid.

Police of the Republic of Indonesia who are suspected or charged with committing criminal acts related to the interests of duty.

- (3) Legal assistance as intended in paragraph (2) shall be carried out by utilizing legal advisors from the National Police of the Republic of Indonesia and/or other legal advisors."

This is not based on Law Number 8 of 1981 concerning the Criminal Procedure Law, Article 1 paragraph 13 which states that legal counsel is appointed or formed under the law to provide legal assistance. The author argues that this government regulation violates Article 27 of the 1945 Constitution which states that all citizens are equal in their position in law and government and are obliged to obey the law and government without exception. Based on this description, the author concludes that the Government or the Police need to enforce the Advocate Law, the Criminal Procedure Code, and the 1945 Constitution. One of the provisions in Government Regulation No. 3 of 2003 concerning the Implementation of General Judicial Technical Institutions for Members of the National Police of the Republic of Indonesia is not in line with the Fundamental Law Source, thus violating the 1945 Constitution which is the legal basis in laws and regulations as stated in Law No. 12 of 2011 concerning the Establishment of Laws and Regulations Article 3 paragraph 1.<sup>20</sup>

According to Prof. Susi Dwi Harijanti as a country that adheres to the civil law system, laws and regulations are the main source of law for the running of government in a country.<sup>21</sup> Therefore, the author argues that government regulation no. 3 of 2003 concerning the Technical Implementation of General Courts for Members of the National Police of the Republic of Indonesia should be in accordance with laws and regulations, because laws and regulations are the main source of law for the running of government.

In his journal, Mr. Supriyadi A Arief entitled Deconstruction of the Immunity Rights of Members of the House of Representatives in the Perspective of Equality Before The Law in 2019, that because the tradition of Continental European law is very thick in Indonesia, Indonesia emphasizes laws and regulations as the main source. If we look at some of these explanations, we can see that laws and regulations are the main source of law for the running of government, which should be obeyed by the government where government regulations are under the law.<sup>22</sup>

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<sup>20</sup> Samuel Bona Tua Rajagukguk, Umi Rozah, and Irma Cahyaningtyas, "Analisis Yuridis Normatif Peninjauan Kembali Oleh Jaksa Dalam Putusan Mahkamah Konstitusi Nomor 33/Puu-Xiv/2016 Tentang Uji Materi Pengujian Pasal 263 Ayat (1) Undang-Undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana," *Diponegoro Law Journal* 8, no. 3 (July 31, 2019): 2342-66, <https://doi.org/10.14710/dlj.2019.26020>.

<sup>21</sup> Abin Rifa Aldani, "Wacana Penambahan Kewenangan Dewan Perwakilan Daerah Sebagai Lembaga Legislatif," *Siyasi: Jurnal Trias Politica* 1, no. 2 (November 24, 2023): 195-208, <https://doi.org/10.1557/sjtp.v1i2.31001>.

<sup>22</sup> Supriyadi A. Arief, "Dekonstruksi Hak Imunitas Anggota DPR Dalam Perspektif Equality Before The Law," *Jambura Law Review* 1, no. 1 (January 30, 2019): 22-45, <https://doi.org/10.33756/jalrev.v1i1.2016>.

A. Hamid S. Attamimi argued that regarding the formation of good laws and regulations, the establishment of proper Indonesian laws and regulations is the ideal of Indonesian law; the principles of the State based on the Law and Principles of Government based on the Constitution; Other principles.<sup>23</sup> The formation of laws and regulations must prioritize clarity of objectives, in the sense that the purpose of the formation of laws and regulations must be clear, fulfilling the wishes of the public in order to create fair certainty so that it can distribute benefits to all Indonesian people. The formation of laws and regulations must adjust the type, hierarchy, and content material as well as principles that are in accordance with the basis for the formation of laws and regulations. From this explanation, the author argues that the formation of government regulations should be in accordance with the ideals of the law, namely the State Principle based on the Law and the Principle of Government based on the Constitution, other principles, in this case, are article 13 paragraph 3.

According to Lon Fuller, there are eight internal legal morals (eight principles of legality) that must be embodied by law, namely:

- a) There are rules that are created in advance, there are no ad-hoc decisions or arbitrary actions,
- b) regulations that are duly announced,
- c) rules should not be retroactive,
- d) the formulation of regulations can be understood by the people (clear and detailed),
- e) law as something that is possible to be carried out,
- f) there is no conflict between one rule and another,
- g) the rules should not be changed frequently (are fixed in nature), and;
- h) There is a conformity between the actions of the legal officer and the regulations that have been made.<sup>24</sup>

Based on this explanation, the author argues that government regulation no. 3 of 2003 concerning the technical implementation of institutional general justice for members of the national police of the Republic of Indonesia does not have legal certainty and cannot be implemented because it is contrary to other regulations and is not based on the regulations above, namely the Advocate Law, the Criminal Code, and the basic law, namely the 1945 Constitution.

Therefore, the author concludes that government regulation no. 3 of 2003 concerning the technical implementation of general judicial institutions for members of the national police of the Republic of Indonesia should not be able to be implemented, because the one who should provide legal aid is legal counsel taken from legal aid

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<sup>23</sup> Rokilah Rokilah and Sulasno Sulasno, "Penerapan Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan," *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (December 29, 2021): 179-90, <https://doi.org/10.30656/ajudikasi.v5i2.3942>.

<sup>24</sup> Cahya Wulandari, "Kedudukan Moralitas Dalam Ilmu Hukum," *Jurnal Hukum Progresif* 8, no. 1 (April 30, 2020): 1-14, <https://doi.org/10.14710/hp.8.1.1-14>.

institutions or community organizations such as the order of law no. 16 of 2011 concerning legal aid article 1 paragraph 2.

### 3.2.1. Legal Aid

*Legal aid* refers to any type of legal support (including providing legal advice or acting as legal counsel for an individual involved in a case) provided to individuals who are facing economic hardship, which causes them to be unable to pay attorney's fees or defense attorney's fees.<sup>25</sup> According to Soerjono Soekanto, legal aid basically refers to the assistance provided by specialists to individuals in society who need support to uphold their rights and receive appropriate legal protection.<sup>26</sup> Fence M, Wantu in his book "The Dimensions of Legal Services" explained that the provision of legal aid is legal services provided free of charge to people who are financially unable to ensure access to justice. This legal assistance can be in the form of legal consultation, preparation of legal documents, and assistance in the judicial process.<sup>27</sup> In accordance with the opinion of Gustav Radbruch argues that the purpose of law is also directed to justice and legal certainty in addition to its orientation towards usefulness.<sup>28</sup> The legal order must be established with the aim of justice. Given that "justice cannot be separated from the part of the law itself other than the aspects of legal certainty and legal benefits.<sup>29</sup> Meanwhile, justice is defined as the process of finding solutions to problems that occur in criminal cases where the victim's involvement.<sup>30</sup> The provision of Legal Aid is legally regulated under a legal umbrella, especially Law Number 16 of 2011 concerning Legal Aid which states that Legal Aid Providers not only provide legal protection to the National Police, but also to people outside the National Police of the Republic of Indonesia:

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Article paragraph 1	1	"Legal Aid is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients.
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<sup>25</sup> Bernadetha Aurelia Oktavira, "Perbedaan Pro Bono dengan Bantuan Hukum (Legal Aid)," July 18, 2023, <https://www.hukumonline.com/klinik/a/perbedaan-pro-bono-dengan-legal-aid--lt5cb826745c95d/>.

<sup>26</sup> Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum* (Jakarta: Rajawali Pers, 2019), <https://www.rajagrafindo.co.id/produk/faktor-faktor-yang-mempengaruhi-penegakan-hukum-soerjono-soekanto/>.

<sup>27</sup> Fence M. Wantu, *Dimensi-Dimensi Pelayanan Hukum* (Malang: Thafa Media, 2020).

<sup>28</sup> Vifi Swarianata et al., "The Legality of Brushing Practices in the Viewpoint of Consumer Protection Law and Telematics Law," *Jambura Law Review* 5, no. 2 (July 31, 2023): 356–85, <https://doi.org/10.33756/jlr.v5i2.24040>.

<sup>29</sup> Mohamad Rusdiyanto U. Puluhulawa et al., "The Urgency of Regulation of Electric Bikes in Gorontalo City in a Progressive Legal Perspective," *Jambura Law Review* 4, no. 2 (July 12, 2022): 270–86, <https://doi.org/10.33756/jlr.v4i2.11780>.

<sup>30</sup> Lisnawaty Wadju Badu and Julisa Aprilia Kaluku, "Restoratif Justice In the Perspective of Customary Law: A Solution to the Settlement of Narcotics Crimes Committed by Children," *Jambura Law Review* 4, no. 2 (July 30, 2022): 313–27, <https://doi.org/10.33756/jlr.v4i2.11664>.

Article paragraph 2	1	Legal Aid Provider is a legal aid institution or community organization that provides Legal Aid services based on this Law.
Article paragraphs 1, 2, 3	4	(1) Legal Aid is provided to Legal Aid Recipients who face legal problems.  (2) Legal Aid as intended in paragraph 1 covers civil, criminal, and state administrative law issues, both litigation and non-litigation.  (3) Legal Aid as intended in paragraph 1 includes exercising power, accompanying, representing, defending, and/or carrying out other legal actions for the legal interests of the Legal Aid Recipient."

In addition, in Law no. 18 of 2003 concerning advocates, legal aid is defined as:

Article 1	1.	"Legal Services are services provided by Advocates in the form of providing legal consultation, legal assistance, exercising power, representing, accompanying, defending, and carrying out other legal actions for the client's legal interests.  9) Legal Aid is a legal service provided by an Advocate free of charge to Clients who are unable to afford it."
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Meanwhile, in terms of implementing Legal Aid, the Legal Aid Provider in this case is a legal aid institution or community organization in accordance with law no. 16 of 2011 concerning Legal Aid, which has the right to recruit several professions or individuals such as Advocates, Paralegals, Lecturers, and Students of the Faculty of Law, as stated in article 9 letter (a) of Law no. 16 of 2011 which reads:

Article 9	Legal Aid Providers have the right to: "a. recruiting advocates, paralegals, lecturers, and students of the Faculty of Law;
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Kemudian pemberi Bantuan Hukum juga memiliki kewajiban kepada Advokat, Paralegal, Dosen, dan Mahasiswa fakultas hukum yang direkrut sesuai dengan pasal 9, dan hal tersebut tertuang dalam pasal berikutnya yakni pasal 10 huruf (c) undang-undang no. 16 tahun 2011 tentang Bantuan Hukum, berbunyi:

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Article 10	The Legal Aid Provider is obliged to: c. organizing Legal Aid education and training for advocates, paralegals, lecturers, and students of the Faculty of Law who are recruited as intended in Article 9 letter a;
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Based on this explanation, we can find out that in terms of providing legal aid services, the teaching profession, in this case lecturers on campus and students of the faculty of law, can also contribute to providing legal aid based on law no. 16 of 2011 concerning legal aid, however, the police profession is not listed in law no. 16 of 2011 concerning legal aid. Therefore, the author concludes that members of the police are not a profession that can provide legal assistance.

From the explanation above, the author concludes that the legal aid institution or community organization that provides legal aid services should be the legal aid institution, then this Government Regulation is contrary to law no. 16 of 2011 concerning legal aid because in the hierarchy of laws and regulations, government regulations are under the law. And members of the police cannot provide legal assistance. In Law no. 12 of 2011 concerning the establishment of laws and regulations article 7 paragraphs 1 and 2 which reads:

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Paragraph 1	The types and hierarchy of Laws and Regulations consist of:  a. Constitution of the Republic of Indonesia in 1945;  b. Decree of the People's Consultative Assembly  c. Government Laws/Regulations in lieu of Laws;  d. Government Regulations;  e. Presidential Regulation;  f. Provincial Regional Regulations; and  g. Regency/City Regional Regulations.
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Paragraph 2	The legal force of the Laws and Regulations is in accordance with the hierarchy as intended in paragraph (1)."
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So in conclusion, Legal Aid is a legal service that is provided free of charge to people who are financially unable to ensure access to justice in the form of legal consultation, preparation of legal documents, and assistance in the judicial process. The provision of Legal Aid is legally regulated under a legal umbrella, especially Law No. 16 of 2011 concerning Legal Aid, in addition to Law No. 18 of 2003 it is also regulated in article 1 paragraphs 2 and 9. The provider of Legal Aid in this case is a legal aid institution or community organization in accordance with law no. 16 of 2011 concerning Legal Aid, which has the right to recruit several professions or individuals such as Advocates, Paralegals, Lecturers, and Students of the Faculty of Law. The teaching profession, in this case lecturers on campus and students of the faculty of law, can also contribute to providing legal aid based on law no. 16 of 2011 concerning legal aid, however, the police profession is not listed in law no. 16 of 2011 concerning legal aid.

## 5. Conclusion

In conclusion, the National Police Chief's Regulation No. 2 of 2017 concerning Procedures for the Provision of Legal Aid by the National Police of the Republic of Indonesia does not include Law No. 8 of 1981 concerning the Criminal Procedure Code in its consideration and is not a derivative of the Criminal Procedure Code, so it cannot be used as a formal legal basis in the criminal procedure law. This regulation authorizes the National Police to provide legal assistance at various stages of the judiciary, such as investigations, prosecutions, and trials, in the form of consultation, advice, legal opinions, advocacy, and assistance. However, this authority is contrary to Law No. 8 of 1981 and Law No. 16 of 2011 concerning Legal Aid, which states that legal aid can only be provided by legal aid institutions or community organizations that have been accredited. In this case, legal aid must come from professions that are explicitly recognized, such as advocates, paralegals, lecturers, and law students, as stipulated in Law No. 18 of 2003 and Law No. 16 of 2011. Therefore, the police profession is not included as a party that can legally provide legal assistance according to the provisions of the applicable law.

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